

JAMES M. CHUDNOW  
LAURENT A. GIESBERT

IBLA 83-555

Decided January 24, 1984

Appeal from decision of the Wyoming State Office, Bureau of Land Management, imposing special stipulations as condition to issuance of noncompetitive oil and gas lease W-79542.

Affirmed.

1. Oil and Gas Leases: Generally -- Oil and Gas Leases: Consent of Agency -- Oil and Gas Leases: Stipulations -- Secretary of the Interior

The Secretary of the Interior may require an oil and gas lease offeror to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease for land located in a national forest. Where on appeal an offeror registers objections concerning such stipulations, and the Forest Service subsequently clarifies the nature of the stipulations and the offeror raises no further complaints, the imposition of the stipulation will be upheld.

APPEARANCES: James M. Chudnow and Laurent A. Giesbert, pro sese.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

James M. Chudnow and Laurent A. Giesbert have appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated February 24, 1983, imposing special stipulations as a condition to issuance of noncompetitive oil and gas lease W-79542. The lands sought for leasing are located in the Bridger-Teton National Forest. The stipulations were recommended by the Forest Service in a February 15, 1983, letter to BLM.

In the statement of reasons for appeal, Chudnow and Giesbert state that the "Limited Surface Use Stipulation" is vague in that it mentions only summer months, rather than identifying specific dates. They state that dates should be provided. Further, appellants state that they cannot understand the special stipulation which provides that there is to be "Conditional No Surface Occupancy" because that provision does not specify the reason for, nor the lands covered by, the provision. Appellants state that they contacted BLM by telephone concerning their objections and were referred to the Forest Service.

They assert that repeated phone calls to the Forest Service had resulted in no clarification of the stipulations. They assert that more information should be provided before the lease is issued.

BLM received appellants' notice of appeal/statement of reasons on April 5, 1983. <sup>1/</sup> The record contains a copy of a letter dated April 13, 1983, sent by certified mail to appellants by the Regional Forester, Forest Service. The letter acknowledges receipt of a copy of appellants' appeal. After informing appellants that an appeal would be handled by the Department of the Interior, the Regional Forester addressed the complaints raised by appellants.

With respect to appellants' concern for the lack of dates for "summer months" in the "Limited Surface Use Stipulation," the Regional Forester explained the rationale for the stipulation and concluded that "the Bridger-Teton has defined 'summer months' as the period from July 1 to September 1."

The second stipulation referred to in the statement of reasons provides:

Conditional No Surface Occupancy Stipulations. The lessee agrees not to occupy or use the surface of those areas technically unsuited for occupancy except for certain limited uses as permitted in writing by the authorized officer of the surface management agency. This stipulation, at a later date, may be modified, supplemented, eliminated, or remain unchanged. Alteration of the stipulation will be conditional upon the preparation of a site-specific environmental assessment or, if required, an environmental statement. In the event this stipulation is eliminated, it will be replaced by other special stipulations as required to protect the surface resources.

In response to appellants' concerns about this stipulation, the Regional Forester stated that the stipulation applied to areas which were technically unsuited for occupancy, i.e., areas of landslides, wetlands, avalanche chutes, precipitous slopes, etc. He further stated that it is very difficult to define such areas by legal subdivision, lots, metes and bounds, or any other means, because such areas are related to geology and topography and, therefore, would be identified when the surface managing agency conducted a site-specific environmental analysis of any proposed activity.

The Regional Forester concluded: "We hope that the above explanation will clarify the intent of the stipulations and illustrate the difficulty in establishing rigid areas and dates of restrictions."

[1] The Secretary of the Interior has the discretionary authority to require the execution of special stipulations as a condition precedent

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<sup>1/</sup> BLM time stamped the notice and statement of reasons for appeal on Apr. 5, 1983. A certified receipt card submitted by appellants shows that the appeal was received by BLM on Apr. 4, 1983. Appellants received the BLM decision on Mar. 4, 1983. The appeal was timely filed. 43 CFR 4.401(a); 43 CFR 4.411.

to issuance of oil and gas leases for land which is located in a national forest in order to protect environmental and other land use values. James M. Chudnow, 62 IBLA 16 (1982); Richard P. Cullen, 18 IBLA 414 (1975). The need for a stipulation should be clear, and the stipulation should be a reasonable means to the intended purpose. The Forest Service's recommended stipulations should be carefully considered by the Department. Such stipulations will be upheld on appeal, however, only if the record shows that BLM adequately considered the factors involved. H. E. Shillander, 44 IBLA 216 (1979); Neva H. Henderson, 31 IBLA 217 (1977); Earl R. Wilson, 21 IBLA 392 (1975); A. A. McGregor, 18 IBLA 74 (1974).

In this case appellants registered objections to two stipulations recommended by the Forest Service and accepted by BLM for inclusion in the lease in question. Appellants' objections were directed to the necessity for clarification of the stipulations. At the time they filed their notice of appeal/statement of reasons there had been no clarification. Subsequent to that time the Forest Service specifically addressed appellants' concerns. Appellants have not come forward with any further complaints about the stipulations. The record supports the imposition of the stipulations.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Bruce R. Harris  
Administrative Judge

We concur:

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Anne Poindexter Lewis  
Administrative Judge

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Gail M. Frazier  
Administrative Judge

